IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1460 OF 2006.

Dattatraya Tkaram Sawant. ... Appellant.

Versus.

The Municipal Corporation of
Greater Mumbai. ... Respondent.

Shri D.K.Dubey for the Appellant.

Shri J.J.Xavier for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 26th July, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties. The Appellant is the original Plaintiff. The Appellant filed a suit for challenging the order made on 9th February 2000 under section 351 of the Mumbai Municipal Corporation Act, 1888. The said order was passed after serving a show-cause notice to the Appellant under section 351 of the said Act. In the notice it was alleged that the Appellant has carried out consturction/vertical extension with B.M.Walls and A.C.sheet roof having a size as described in the sketch forming part of the notice. The Appellant replied to the said notice. After considering the reply, the order dated 9th February 2000 was passed. The suit filed by the Appellant has been dismissed by the learned trial Judge. The Appellate has placed on record a compilation of the copies of documents relied upon by him before the trial Court.

2. The learned Advocate for the Appellant submitted that there was no written statement filed by the Respondent-Corporation denying the averments made in the plaint. He submitted that a decree should have been passed under Order VIII Rule 10 of the Code of Civil Procedure, 1908. He submitted that the premises on which the offending structure is erected are located in a slum area declared under section 4 of the Maharashtra Slums Areas (Improvement, Clearance and Redevelopment) Act, 1971. He submitted that the structure is located on a government land and on all the structures in the locality such constructions have been made and the Respondent-Corporation has not taken any action against those structures.

3. I have considered the submissions. In paragraph 8 of the Judgment, the learned trial Judge has observed that the Appellant admitted in the cross-examination that he has not obtained any permission for erection of the structure from the Corporation. In paragraph 10, the learned Judge has referred to the same admission of the Appellant. He has also referred to another admission given by the Appellant that the upper portion of the suit premises is being used for the purpose of storage. The learned trial Judge, therefore, held that admittedly the offending construction has been erected unauthorisedly and that is the reason why he has dismissed the suit.

4. So far as the argument based on the said Act of 1971 is concerned, the Appellant has not referred to any notification under section 4 of the said Act of 1971 in the plaint by which the land below the suit structure was allegedly declared as slum. Therefore, the said submission cannot be considered.

5. The third submission is that others have committed illegality and the said illegality has been allegedly tolerated by the Respondent-Corporation. The suit filed by the Appellant is for declaration and injunction under the provisions of the Specific Relief Act, 1963. The relief of declaration and injunction is obviously a discretionary and equitable relief. If the Appellant has committed illegality as is reflected from the admission of the Appellant in the cross examination, he does not deserve any equitable relief. Lastly the Appellant relied upon a letter dated 24th February 2000 written by the local M.L.A. to the Ward Officer. All that the said letter records is that the said M.L.A. met the Hon'ble Chief Minister regarding the offending structure and has explained all the facts to the Hon'ble Chief Minister. The said letter records that the Hon'ble Chief Minister has directed his Secretary to talk to the Municipal Commissioner with instructions not to carry out demolitions. No order passed by the Hon'ble Chief Minister has been produced on record. The

said letter of the local M.L.A. is meaningless and does not help the Appellant.

6. There is no merit in the Appeal. Hence the Appeal is dismissed with no order as to costs.

7. At this stage, the learned Advocate for the Appellant states that the structure may be protected for a reasonable time to enable him to make a representation. In view of the said request, both the parties are directed to maintain statusquo as of today in respect of the offending structure for a period of 8 weeks from today.

Judge.